

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

2013 AUG 15 P 12:45

CIVIL ACTION

NO.  
THOMAS STALCUP,  
Plaintiff,

v.

OFFICE OF THE SECRETARY OF DEFENSE,  
DEPARTMENT OF DEFENSE  
AGENCY of the UNITED STATES of AMERICA,  
Defendant

**I. PARTIES**

1. The plaintiff, THOMAS STALCUP at all times relevant to the allegations of this Complaint, is a citizen of the United States of America and has been a resident of the Town of Sandwich, Barnstable County, in the Commonwealth of Massachusetts.

2. The defendant, the DEPARTMENT OF DEFENSE (hereafter referred to as DOD), is an agency of the of the United States organized and existing under the laws of the United States of America.

**II. JURISDICTION & VENUE**

3. Subject matter jurisdiction exists pursuant to 5 USC § 552(a)(4)(B) which grants a district court of the United States jurisdiction to enjoin an agency from improperly withholding records and to order said agency to produce such records to the complainant. Venue is proper in the District of Massachusetts under 5 USC § 552(a)(4)(B) which grants jurisdiction to the district court in the district in which the complainant, Chairman of the Flight 800 Independent Researchers Organization, Thomas F. Stalcup, lives.

4. Plaintiff Stalcup, has exhausted his administrative remedies, and is therefore entitled to judicial review of this claim pursuant to 5 USC § 552(a)(4)(B).

### **III. STATEMENT OF FACTS**

5. On or about March 28, 2010, pursuant to the Freedom of Information Act (hereinafter, FOIA), plaintiff Stalcup requested from defendant DOD “the names and dates of all Naval, Joint, Defense Program, and/or contractor exercises, operations, and/or tests conducted on the East Coast of the United States in June, July, and August 1996,” among other information as described in the original March 2010 FOIA request that is attached to this Complaint as **Exhibit A**

and herein incorporated by reference.

6. On or about March 28, 2010, pursuant to FOIA, plaintiff Stalcup requested from the Missile Defense Agency (hereafter referred to as MDA) “all Test and Evaluation Master Plan's for all systems involved in Missile Defense for FY1996,” among other information as described in the original March 2010 FOIA request that is attached to this Complaint as **Exhibit B** and herein incorporated by reference.

7. On September 17, 2010, Plaintiff Stalcup received an email from Stephanie Koeshall of the MDA stating that “the [FOIA] case was finalized by MDA on September 14, 2010. All documents have been transferred to the OSD Office of Freedom of Information which has oversight of the MDA FOIA program. You should expect to receive the documents and a letter detailing the release determination from them.”

8. On or about February 15, 2011, pursuant to FOIA, plaintiff Stalcup requested from the DOD “any and all submissions to the Office of the Secretary of Defense regarding the “analysis of, and conclusions regarding, the conduct and results” of any test or exercise conducted from June 1, 1996 to October 30, 1996 on or off the East Coast of the United States involving the launching of one or more missiles,” among other information as described in the original February 2011 FOIA request that is attached to this Complaint as **Exhibit C** and herein incorporated by reference.

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9. Since no documents or information was provided by defendant DOD from any of the above mentioned FOIA requests within the time allowed under FOIA, plaintiff Stalcup filed Administrative Appeals for all three requests on August 19, 2011. Two of these Appeals are included as **Exhibit D**. The third appeal was filed electronically via an online submission form.
10. On August 22, 2011, Plaintiff Stalcup received an email from Curtis Gibbens of the Office of the Secretary of Defense stating: "MDA provided a document that had to be reviewed by ten agencies outside of the Office of the Secretary of Defense. We are still waiting for many of the agencies review response. I will contact them and ask for their status. Please note your previous request, 10-F-0812, was reopened. 11-F-0541 was administratively closed because it was similar to 10-F-0812."
11. The Defendant DOD has failed and/or refused to provide any responsive documents as of the date of the filing of this complaint, which is beyond the time specified under FOIA.

**COUNT I: REQUEST FOR MANDATORY INJUNCTIVE RELIEF ORDERING THE DEFENDANT DOD TO RELEASE ALL RECORDS DESCRIBED IN THE PLAINTIFF'S REQUESTS UNDER THE FREEDOM OF INFORMATION ACT.**

12. The plaintiff hereby incorporates by reference the allegations of Paragraphs 1 through 5 of this Complaint as though fully set forth herein.
13. U.S.C. § 552 (a)(3) requires that governmental agencies "upon any request...shall make the records promptly available to any person."
14. Defendant DOD must be ordered by the Court to comply fully with Plaintiff Stalcup's FOIA requests forthwith.

**COUNT II: REQUEST FOR COSTS & ATTORNEYS FEES FOR BAD FAITH REFUSAL TO COMPLY WITH FOIA STATUTORY MANDATE.**

15. The Defendant DOD's failure and refusal to release its full file to Plaintiff was in willful and intentional violation of the FOIA statute, and was therefore done in bad faith.

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16. The Defendant DOD's failure and refusal to timely provide responsive documents after Plaintiff's appeal was in willful and intentional violation of the FOIA statute and regulations, and was therefore done in bad faith.

17. By reason of Defendant DOD's willful and intentional violations of the FOIA statute and regulations, the Plaintiff has been compelled to file this action in order to obtain copies of the public documents to which he is entitled by law, and where such violations by the Defendant DOD were done in bad faith, Plaintiff Stalcup is entitled to his actual costs of litigation and attorneys fees as provided by 5 U.S.C. Sect. 552(a) (4 ) (E), as amended Open Government Act of 2007, Sect. 4(a )(2)(ii)(II).

**WHEREFORE**, the plaintiff demands Judgment & Relief as follows:


**First, on Count I:** That the Court order the Defendant DOD to produce its complete file on TWA Flight 800 as described in Plaintiff's FOIA request within DOD File F-2010-00895;

**Second, on Count II:** That the Court order the Defendant DOD to pay the plaintiff's actual attorneys fees, litigation costs and expenses for bringing this action; and

**Third, on the Complaint:** That the Court award to Plaintiff such other relief as this it deems just, equitable and appropriate based on the law and the facts as pleaded herein.

Dated: August 13, 2013

For the Plaintiff, Thomas Stalcup  
Pro Se,



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